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SENATE

REPORT
98-454

COAST GUARD AUTHORIZATION ACT OF 1984

MAY 17 (legislative day, MAY 14), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2526]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2526) to authorize appropriations for the Coast Guard for fiscal years 1985 and 1986, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, authorizes appropriations for the Coast Guard for the 1985 and 1986 fiscal years. Funds are authorized for: (1) Operation and maintenance of Coast Guard facilities; (2) acquisition, construction and improvement of equipment and facilities; (3) alteration of bridges obstructing navigable waters; (4) research, development and evaluation of programs related to Coast Guard missions; and (5) retired pay.

The bill authorizes military and civilian personnel floors, and average military student training loads. Also contained in the bill are provisions concerning: (1) Management of Coast Guard operations; (2) employee protection for seamen reporting marine safety violations; (3) a vessel fire response program; and (4) an Associate Deputy Secretary of Transportation.

BACKGROUND

The Coast Guard, organized in 1915, operates as a part of the Department of Transporation DOT, with primary responsibility for the promotion of safety of life and property at sea; the enforcement

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or assistance in enforcement of all applicable Federal laws (including fishing and drug laws) on and under the high seas and U.S. waters; the maintenance of aids to maritime navigation; the protection of the marine environment; icebreaking activities; and the safety and security of vessels, ports, waterways, and their related facilities.

As a military service and a branch of the Armed Forces, the Coast Guard also maintains readiness to operate as a specified service in the Navy upon the declaration of war or when the President directs. In addition, individual units operate with the Navy in time of national emergency.

In recent years, Congress has assigned new duties to the Coast Guard including water pollution control, recreational boat safety regulation, oil spill cleanup, regulation of marine transportation of hazardous materials and natural gas, and enforcement authority over ocean dumping. As the Coast Guard received new duties, its other missions, including drug interdiction and fisheries enforcement, were also expanding. Between 1970 and 1980 alone, more than 30 laws were enacted giving new or expanded resoponsibilities, alone or shared, to the Coast Guard.

As a result of expanding and new duties, an imbalance between the Coast Guard's responsibilities and resources developed. To alleviate this serious gap, Congress transferred capital expense funding from Defense appropriations for fiscal year 1982 and fiscal year 1984. These were in addition to regular Coast Guard appropriations under the annual appropriation legislation for the DOT. Although these additional funds have gone a long way toward rebuilding and enhancing Coast Guard capability, the Committee is concerned that such progress not be stalled in midstream by inadequate funding.

Legislative History

S. 2526 was introduced by Senators Packwood and Stevens on April 3, 1984. A hearing was held on April 3, 1984. At the hearing, testimony was received from the DOT, the Coast Guard, the Navy, the American Bureau of Shipping, the United Fishermen of Alaska and three groups concerned with recreational boating. On May 8, 1984, the Committee unanimously ordered S. 2526 reported with an amendment in the nature of a substitute.

Summary of Major Provisions

As reported, S. 2526 would:

1. Authorize Coast Guard appropriations of $2.42 billion for 1985 and $2.67 billion for 1986;
2. Establish minimum personnel levels of 39,392 military personnel and 5,484 civilian personnel;
3. Direct the Secretary of Transportation to prepare plans for two new polar icebreakers;
4. Bar the sale of recreational boats and equipment with known substantial safety defects;
5. Direct the Secretary of Transportation to develop improved life saving equipment for passenger ferries;

6. Require continued operation of the San Francisco vessel traffic service of Coast Guard military personnel;

7. Provide a procedure for Congressional oversight of efforts to contract out Coast Guard activities now performed by in-house employees;

8. Enact employee protection for seamen who report vessel safety violations;

9. Implement a vessel fire response project;

10. Establish the position of Associate Deputy Secretary of Transportation; and

11. Require the continued availability of 30 cutters on the Atlantic and Gulf Coasts.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 15, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2526, the Coast Guard Authorization Act of 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2526.

2. Bill title: Coast Guard Authorization Act of 1984.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, May 8, 1984.

4. Bill purpose: This bill authorizes the appropriation of $1,800 million for 1985 and $1,950 million for 1986 for Coast Guard operating expenses, as well as necessary funds for increases in salaries and benefits. These increases are projected to cost about $30 million in 1985 and $50 million in 1986. Also authorized by the bill are $580 million in 1985 and $680 million in 1986 for acquisition, construction, and improvement activities; $35 million in 1985 and $38 million in 1986 for research, development, test, and evaluation activities; $5.2 million in 1985 and such sums as may be necessary in 1986 for bridge alteration or removal; an aggregate authorization over three years of $0.6 million for a grant to the Maritime Fire and Safety Association, and such sums as are necessary to provide for retired pay to eligible personnel. These payments are expected to be approximately $345 million in 1985 and $365 million in 1986.

The bill also authorizes a level of 39,392 active duty personnel and 5,212 military training students for 1985 and 1986.

S. 2526 states that the Secretary is encouraged to identify services performed by the Coast Guard which are not inherently governmental and could be performed for less cost under contract to the private sector. However, the bill ensures that the Congress has a role in reviewing proposals to contract for services by requiring the Secretary to submit annually to appropriate Congressional members a list of activities which the Department will evaluate during the year for potential contracting to the private sector.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated authorization level	2,450	2,724			
Estimated outlays	1,626	2,188	729	399	145

The estimated costs for Coast Guard retired pay are not included in the above table, because such pay is an entitlement under current law.

The bill also requires the Secretary to prepare design and construction plans for the purchase of two new polar icebreaking vessels by 1990, and to provide status reports on these plans to the Congress in January 1985 and January 1986. The Coast Guard estimates that the cost of preparing these plans would be approximately $2 million.

The bill also creates the position of Associate Deputy Secretary of Transortation to oversee, among other things, drug enforcement. This position would cost the Department approximately $70,000 per year.

The costs of this bill fall within budget function 400.

Basis of estimate: This estimate assumes that the full amounts authorized for fiscal years 1985 and 1986 will be appropriated prior to the beginning of each fiscal year. Most of the authorized levels are specified in the bill. The estimate for increases in salary and benefits reflects the 1984 pay base, adjusted for CBO's baseline payraise assumptions for 1985 and 1986. Estimated outlays for all of the programs are based on historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On March 20, 1984, CBO prepared a cost estimate for H.R. 4841, as ordered reported by the House Committee on Merchant Marine and Fisheries, March 14, 1984. That bill was similar to S. 2526, but authorized slightly higher funding for Coast Guard operating expenses, lower funding for acquisition, construction, and improvement activities, and no funding for bridge alteration in 1986. The estimated costs reflect these differences.

9. Estimate prepared by: Kathleen Kelly.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee provides the following evaluation of the regulatory impact of the legislation:

Enactment of S. 2526 would involve very few change for either the maritime industry or the Coast Guard. With the exception of the provisions highlighted below, the bill proposes only administrative or technical changes in the status quo, none of which will involve significant regulatory impact.

NUMBER OF PERSONS AFFECTED

Section 6 of the bill would increase Coast Guard regulation of boat retailers, which are located in waterfront areas all around the country. However, such an increase in regulation would only occur when a dealer sells a recreational vessel or related equipment after having been advised by the Coast Guard or the manufacturer that the merchandise contained a substantial safety defect.

Section 16 reinstates a lighting requirement for towing vessels on the lower Mississippi River that was eliminated in 1980. All towing vessel owners operating below the Huey P. Long Bridge in Lousiana would be affected. However, the impact is expected to be favorable because of safety benefits.

ECONOMIC IMPACT

Section 6, barring the sale of defective recreational vessels, would have a small economic impact on marine retailers. The impact should be minimal, however, because current law already requires vessel manufacturers to repair or replace vessels that have defects which are the subject of section 6.

Section 16's requirement for installation of two "masthead" lights on vessels operating on the lower Mississippi River will entail some economic cost to vessel owners. However, the Committee believes the economic impact is outweighed by the safety benefits achieved with the lights.

PRIVACY

The bill will have no impact on the privacy of individuals.

Paperwork

S. 2526 imposes additional paperwork requirements on the Secretary of Transportation: (a) Preparation of design and construction plans for two new icebreakers; (b) preparation of a study on the costs and benefits of having civilians run the San Francisco Vessel Traffic Service instead of military employees; and (c) annual development of a list for Congress showing all Coast Guard facilities which may be subject ot contracting during the fiscal year. On the other hand, section 12 of the bill would remove the requirement for a separate bridge alteration permit from the Corps of Engineers and limit the permits to one issued by the DOT.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TILE

States the short title of the act, which is the "Coast Guard Authorization Act of 1984".

SECTION 2—AUTHORIZATION OF APPROPRIATIONS

Authorizes appropriations for Coast Guard expenses for the 1985 and 1986 fiscal years in five accounts: operations and maintenance; acquisition, construction and improvement; research and development; bridge alteration; and retired pay.

Paragraph (1) authorizes $1,800 million for fiscal year 1985 and $1,950 million for fiscal year 1986 for operating expenses including fixed costs associated with icebreaking operations by Coast Guard vessels in polar regions. In addition, such amounts as may be necessary are authorized in both years for legally required increases in salaries and other employee benefits.

The 1985 authorization level is $41 million above the administration request and approximately $115 million above the appropriations level for 1984. The additional funds are intended to provide the Coast Guard with the resources needed to maintain the current military personnel level through 1985. The administration request was partially predicated on a reduction in Coast Guard military personnel of 513. The additional funds should also allow full funding for aircraft maintenance, and full augmentation of cutter crews, in order to compensate for the temporary loss of cutters caused by vessel renovation.

In the context of operation, it is noted that the Coast Guard authorization bill for fiscal year 1982 required the Coast Guard to deploy at least one helicopter for search and rescue, as well as other missions, at each of the following sites: Newport, Oreg.; Charleston, S.C.; and Cordova, Alaska. The Committee is concerned about the agency's failure to carry out this directive and expects the Coast Guard to comply at the earliest opportunity.

Paragraph (2) authorizes $580 million for acquisition, construction and improvements (A,C&I) in fiscal year 1985 and $680 million in fiscal year 1986. The 1985 figure is $218 million above the President's budget request and $89 million below the amount appropriated for fiscal year 1984.

The 1985 authorization of $580 million is intended to continue the Coast Guard's effort to significantly upgrade its cutters, aircraft and shoreside physical plant, particulary in support of its at-sea operational missions, such as search and rescue, law enforcement and military readiness.

Included in the authorization for A,C&I are funds for the Fleet Renovation and Modernization (FRAM) program. The FRAM program involves renovation of high endurance Coast Guard cutters, and directly benefits the Coast Guard's operational capability with respect to search and rescue and military readiness. The Committee has two concerns about the progress of this vital program.

First, the Committee is concerned over the adequacy of funds made available for the FRAM program from fiscal year 1984 appropriations. While original estimates dedicated $136 million of such

appropriations for completion of four FRAM cutters, that figure has been reduced substantially to $67 million. The Committee is concerned that such reductions not, under any circumstances, slow the pace of the FRAM program or disrupt the assigned work packages on the vessels which are necessary to assure cost effective contracts. The committee is aware of the $55,450,000 request for the FRAM program contained in the fiscal year 1985 budget request and is also aware of the Secretary's request for an additional $33,300,000 to restore deficiencies incurred in the fiscal year 1984 funding. Without adopting a stance on the need for the additional $33 million, the Committee supports whatever funding is necessary to continue and eventually complete this essential element of the Coast Guard's mission.

A second concern regarding the FRAM program involves the Request for Proposal (RFP) by the Coast Guard for completion of work on the 12 FRAM vessels. Although funding has been approved for only three of the vessels, the RFP intends to assign work for all 12 vessels to a maximum of two contractors. Not only is the Coast Guard in error in arguing cost savings associated with this practice, but the practice ignores the economic plight of other qualified ship repair yards which could compete for, and complete, the FRAM vessel overhauls in an expeditious and cost effective manner. The Committee encourages the Coast Guard to recognize the value of multiple contracts and directs the agency to amend its RFP in order to "split" the FRAM contracts among those most qualified private ship repair yards.

Paragraph (2) also contains funding for a search and rescue facility in the Aleutian Islands in Alaska. The Western Aleutians are located in the middle of the vast and rapidly developing fishing grounds in the Gulf of Alaska and the Bering Sea. The Coast Guard station at Kodiak, Alaska, is located 450–500 miles east of this activity. It takes over 4 hours for search and rescue helicopters to reach the area. In 1982, there were 8 major vessel casualties resulting in the loss of 22 lives within 100 miles of Dutch Harbor, the major port in the area. In 1983, another 21 lives and $6,500,000 in property were lost. Anticipated increases in fishing activity are likely to result in commensurate increases in loss of life and property. Completion of the construction phase of this facility will require an additional appropriation in fiscal year 1987 of approximately $15 million.

Paragraph (3) authorizes $35 million for research, development, test and evaluation in fiscal year 1985 and $38 million is fiscal year 1986. The figure compares with an administration request of $23,500,000 for 1985 and an appropriation for 1984 of $22,500,000.

Of the programs to be funded out of research and development, the Committee expects the Coast Guard to devote particular attention to the development of emergency lifesaving equipment on passenger ferries, as required by section 7 of the bill.

The Committee is concerned by the recent rash of vessel capsizings, particularly in the North Pacific. The Committee understands that in order to clearly define the stability changes that vessels undergo at different levels of performance, the Coast Guard plans to test equipment designed to provide early detection of vessel instability and thereby help prevent capsizings. The Committee urges

the Coast Guard to conduct these tests expeditiously and make the findings available to the maritime public in the interest of maritime safety.

Paragraph (4) authorizes $5,200,000 for fiscal year 1985 for alteration or removal of bridges over the navigable waters of the United States that are deemed "unreasonable obstructions to navigation" under the Truman-Hobbs program. It is anticipated that the full amount of the 1985 authorization will be allocated for the Burlington-Northern Railroad Bridge over the Willamette River in Portland, Oreg., as recommended by Coast Guard and approved by the DOT and the President. For 1986, paragraph (4) authorizes such sums as may be necessary. The 1985 authorization level is equal to the administration's budget request.

Pargraph (5) authorizes such sums as may be necessary to pay obligations to retired Coast Guard personnel, for fiscal years 1985 and 1986. It is estimated that these obligations will equal $334,800,000 in 1985.

SECTION 3—PERSONNEL LEVELS

Section 3 provides that the Coast Guard shall have not less than 39,392 military personnel in 1985 and 1986. This equals the planned end-of-year strength in 1984.

The section also requires the Coast Guard to maintain a civilian employment level of at least 5,484. This number equals the civilian employment floor contained in the Goast Guard Authorization Act for 1983 and 1984 (section 114 of Public Law 97–322).

A civilian floor has been included in previous authorizations. However, this is the first authorization bill to include a military floor. The Committee included the floor to halt the numerical decline of Coast Guard military personnel.

The Committee expects "full-time equivalent employment" to be used to determine whether the Coast Guard has met or exceeded its designated personnel floors in S. 2526. "Full-time equivalent employment" refers to the Office of Management and Budget (OMB) procedure for determining employment levels.

SECTION 4—MILITARY TRAINING

This section authorizes the student-year levels for various categories of Coast Guard training for fiscal years 1985 and 1986 as follows:

For recruit training, 3,500 student-years;
For flight training, 118 student-years;
For professional training in military and civilian institutions, 556 student-years.

A student-year is defined as the product of the number of students scheduled to attend each course in the category multiplied by the course length expressed in fractions of years (i.e., course length in weeks divided by 52 weeks).

SECTION 5—POLAR ICEBREAKING

Subsection (a) states the sense of Congress that the United States has important security, economic, and environmental interests in

developing and maintaining a fleet of icebreaking vessels capable of operating effectively and independently in the heavy ice regions of the Arctic and Antarctic.

Subsection (b) requires the Secretary to prepare design and construction plans for the purchase of at least two new polar icebreaking vessels to be operational by the conclusion of fiscal year 1990 and to provide detailed reports to the Congress describing the status of those plans in January 1985 and January 1986. The new icebreaking vessels are needed to replace the *Westwind* and, *Northwind,* two antiquated cutters due for retirement by the end of this decade. It is anticipated that the reports on the status of the design and construction plans will be submitted at the time of the budget presentation to Congress for the succeeding fiscal years. The Committee expects the Secretary to consult with the Director of the National Science Foundation and the Secretary of the Navy to ensure that adequate scientific facilities are provided on the vessels.

In addition to expressing its support for a capable heavy icebreaker fleet for the United States, the Committee also recommends that the OMB alter its present method of allocating funds among various Federal agencies for icebreaker operations. The Committee believes that OMB should seek to facilitate planning for the procurement, maintenance and deployment of icebreakers needed to provide a platform for polar research by allocating to the Coast Guard all funds necessary to support icebreaking operations, except for nonrecurring incremental costs associated with specific projects.

SECTION 6—RECREATIONAL BOAT SAFETY

Subsection (a) amends section 4307(a)(1)(A) of title 46, United States Code, to prohibit dealers, distributors and imorters from selling a boat or associated equipment after receiving notification from the Coast Guard or the manufacturer that it has a safety defect which creates a substantial risk of injury to the public. This proposed prohibition is in addition to the present section 4307(a)(1)(A) prohibition against sales f boats and equipment that do not comply with Coast Guard standards. Section 4307 was originally section 12 of the Federal Boat Safety Act (FBSA). Public Law 98-89, which codified the sections in title 46, United States Code, under Coast Guard jurisdiction as subtitle II of title 46, repealed the FBSA.

Presently, there are adequate prohibitions in section 4307 to deter a dealer, distributor or importer from selling or offering for sale boats or items of associated equipment that do not conform with boating safety regulations. However, there is nothing in section 4307 to prevent a dealer, distributor or importer from selling a boat or item of associated equipment after notification that it contains a safety defect as described in section 4310. Under section 4310, the manufacturer is required to notify dealers and distributors of the safety defect and to correct the defect at his sole cost and expense. The Coast Guard has found, however, that in spite of these notices, some dealers and distributors fail to have the safety defects corrected and continue to sell the boats or items of associated equipment containing the defect. The amendment to section 4307(a)(1)(A) will prohibit this practice.

Subsections (b) and (c) amend section 4311 (b) and (f) of title 46 by providing a due care defense for defects. In the original enactment of the FBSA, Congress provided a due care defense for violations of section 12 (presently section 4307 of title 46) prohibitions. This defense remains limited to persons dealing in boats or associated equipment who, in the exercise of due care, believe that these items conform with Federal boat safety standards. Amended section 4311 will now also protect persons dealing in boats or associated equipment that have a safety defect of which the dealer or distributor is unaware in the exercise of due care.

SECTION 7—LIFESAVING EQUIPMENT ON PASSENGER FERRIES

This section requires the Coast Guard to proceed vigorously with efforts to develop improved lifesaving equipment on passenger ferries.

Having reviewed the adequacy of ferry safety equipment, and ferry safety in general, the Committee believes the Coast Guard should give particular attention to the study by Prof. Edward Wenk, Jr., Emeritus Professor of Engineering and Public Affairs, of the University of Washington in Seattle. Professor Wenk's comprehensive 1982 study focused on the safety of the Puged Sound ferry fleet. In written testimony submitted to the Committee during its consideration of S. 2526, Professor Wenk observed: "As to life rafts, most ferries have none. They travel in all kinds of weather; regularly cross traffic lanes; make more transits by far than any other vessel. They thus have the greatest statistical risk of casualty."

SECTION 8—SAN FRANCISCO VESSEL TRAFFIC SYSTEM

This section provides that funds available to the Coast Guard for operating expenses shall be used to the extent necessary to maintain, in full operation, the vessel traffic service (VTS) system located in San Francisco, Calif. The Committee intends "full operation" to mean the overall operation level of the VTS as maintained in the preceding 2 years.

Section 8 also provides that no funds authorized by S. 2526 may be used to replace Coast Guard military personnel with civilian personnel or a private contractor until the Coast Guard has conducted a study showing the costs and benefits of such a transformation. The study should particularly focus on the impacts on San Francisco Bay users if civilians assume operation of the VTS.

SECTION 9—NOTIFICATION OF CONTRACTING

Subsection (a) encourages the Secretary of Transportation to identify those functions and services presently performed by Coast Guard personnel which are inherently governmental in nature and which may be performed with equal effectiveness and at lower cost under contract to the private sector.

Subsection (a) also expresses the Committee's belief that contracting out services performed by the Coast Guard should not result in any deterioration of the Coast Guard's overall ability to perform its duties. The Committee particularly emphasizes that Coast Guard capabilities with respect to search and rescue and

military readiness must not be adversely affected by contracting. Nor should recipients of Coast Guard services suffer any adverse impact if those services are performed by private contractors.

Subsection (b) requires the Secretary of Transportation to submit to Congress a complete list of activities now performed by members of the Coast Guard which the Secretary expects to evaluate during that fiscal year. The list is to be submitted at least 60 days before the beginning of the fiscal year, and must include a short description of each activity, as well as its location and personnel involved. None of the funds authorized in section 2 may be used to develop or issue a request for proposals to contract out any function or activity not included in the list for the applicable fiscal year.

The list submitted for a given fiscal year is applicable only to that fiscal year. Any activity which will be reconsidered during a later fiscal year must be resubmitted on that fiscal year's list.

This section is intended to respond in a balanced way to administration plans to being contracting out a number of functions presently performed by Coast Guard personnel. The Committee encourages the administration to apply the analytic procedures of OMB Circular A-76 to Coast Guard activities which are clearly not inherently governmental, ans which can be done under contract with the private sector at a subtantially reduced cost.

The Committee is also concerned, however, about the apparent breadth of present administration plans to apply A-76 to the Coast Guard. In the 1985, the administration hopes to eliminate 293 military and 289 civilian positions through A-76 contracting, in addition to 120 military and 36 civilian positions as a result of separate, congressionally-authorized, contracting for aids to navigation. It appears that the A-76 process could, in time, affect as many as 5,000 Coast Guard positions, and result in dramatic changes in the size, function, and overall capabilities of the Coast Guard.

The notification procedures established by this amendment are intended to guarantee close congrssional oversight of a process that appears to be of great potential importance to the Coast Guard. The Committee is normally very reluctant to establish requirements that impose additional reporting duties on the executive branch. It is anticipated that the Implementation of this section will evolve in a manner sufficient to satisfy the informational needs of the Congress, but the Committee expresses its willingness to consult with executive branch officials for the purpose of minimizing duplication of effort and unnecessary paperwork. As application of the A-76 process to the Coast Guard goes forward, it is hoped that a consensus can be developed with respect to the types of activities which should and should not be subject to contracting. If this consensus does develop, the Committee does not expect that it will be necessary to continue the notification requirements imposed by this section beyond the 2 year period of this act.

The provisions of this section are not intended, in any way, to indicate a change in congressional intent from that demonstrated by enactment of section 5 of the Coast Guard Authorization Act of 1982 (Public Law 97-322). That measure authorizes the Coast Guard to issue contracts with any person, public body or instrumentality for the establishment, operation, and maintenance of aids to maritime navigation. The Committee expects the Coast

Guard to proceed with present plans to increase contracting in this area.

SECTION 10—EMPLOYMENT PROTECTION FOR SEAMEN

Section 10 amends Chapter 21 of title 46, United States Code, by adding a new section 2414 at the end which provides that a ship owner, charterer, managing operator, agent, master or individual in charge of a vessel may not discriminate against a seaman because the seaman has reported or is about to report a violation of the safety requirements of subtitle II of title 46 to the Coast Guard.

If the vessel owner or other named person violates this section, the seaman has the right to bring an action in an appropriate U.S. District Court. The court is authorized to enjoin the discrimination and to order any other appropriate relief, including reinstatement to the seaman's former position with backpay.

The Committee intends the term "seaman" to be interpreted broadly, to include any individual engaged or employed in any capacity on board a vessel owned by a citizen of the United States. To receive relief, the seaman must act in good faith, believing that a violation of subtitle II of title 46 has occurred.

This section responds to *Donovan* v. *Texaco,* (720 F. 2d 825 (5th Cir. 1983)) in which a seaman was demoted and ultimately discharged from his job for reporting a possible safety violation to the Coast Guard. The seaman sought relief under the Occupational Safety and Health Act (OSH Act), and particularly section 11(c), which prohibits retaliatory actions against employees who exercise their rights under the act. The Fifth Circuit Court of Appeals held that the OSH Act section 11(c) was not available to the seaman in this case.

Section 10 of the bill establishes a new legal remedy for seamen, to protect them against discriminatory action due to their reporting a violation of subtitle II to the Coast Guard. The amendment creates a private right of action similar but not identical to that in OSH Act section 11(C).

The Committee does not intend to supersede any part of the OSH Act by this amendment; the amendment is without prejudice to whether an OSH Act section 11(c) remedy may still be available to seamen in factual circumstances different than those in *Donovan* v. *Texaco.*

SECTION 11—REPEAL OF DUPLICATE TANKERMAN MANNING REQUIREMENT

This section repeals section 8703(b) of title 46, United States Code, giving the Secretary authority to promulgate requirements for the issuance of certificates or endorsements as tankerman. An identical provision is codified at section 731 (a) of title 46, United States Code. The Committee intends to leave section 7317(a) intact.

SECTION 12—APPROVAL OF BRIDGE LOCATION AND HEIGHT

Under the originally enacted act of March 23, 1906, and the General Bridge Act of 1906, the Secretary of War (the name was later changed to the Secretary of the Army) and the Chief of Engineers

were granted the authority to determine the location and clearances of bridges over the navigable waters of the United States. In 1966, with the creation of the DOT, this authority was transferred to the Secretary of Transportation by subsection 6(g) (6) of the Department of Transportation Act (DOT Act), Public Law 89-670 (49 U.S.C. 1655(g) (6)). The bridge statutes themselves were not amended and a note was used in the United States Code to describe this transfer of functions.

The DOT Act was subsequently revised as part of the codification of subtitle I and chapter 31 of title 49, United States Code (Public Law 97-449). Section 2(d) (1) of Public Law 97-449 amended the bridge statutes in question to conform them with the transfer of functions that originally took place under the DOT Act, by substituting the Secretary of Transportation for the Secretary of War. Unfortunately, the effect was to leave the Chief of Engineers in the statutes and to require that a permit be granted by both the Chief of Engineers and the Secretary of Transportation before a bridge could be lawfully built over the navigable waters of the Untied States. This was an inadvertent substantive change to the law. Since Public Law 97-449 has a savings provision in section 6(a) to protect against substantive changes in the law, no change in the bridge permitting process is needed. Section 12 corrects the error in Public Law 97-449 by removing all references to the Chief of Engineers.

SECTION 13—RULES OF THE ROAD ADVISORY COUNCIL

This section, which is an amendment to section 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073), does two things. First, it eliminates the entitlement of the members of the Rules of the Road Advisory Council to compensation for their services. Second, and more important, it extends the life of the council from December 24, 1985, to December 25, 1990.

Section 5 of the Inland Navigational Rules Act of 1980 mandated the establishment of the Rules of the Road Advisory Council for a period of 5 years to advise the Secretary of Transportation on issues relating to international and inland navigational rules.

SECTION 14—AMENDMENTS TO THE MILITARY CONSTRUCTION AUTHORIZATION ACT OF 1982

This section changes provisions in the Military Construction Authorization Act, 1982, which enabled certain former Public Health Service facilities to be designated as medical facilities of the uniformed services for purposes of chapter 55 of title 10, United States Code. This section grants the Secretary of Transportation, by virtue of the Secretary's cognizance over the Coast Guard, equal status with the Secretary of Defense and the Secretary of Health and Human Services regarding joint issuance of the notice of termination of the above designation and regarding joint negotiation of rates of reimbursement for care provided by the facilities concerned.

SECTION 15A—INCLUSION OF THE SECRETARY OF TRANSPORTATION IN CERTAIN MEDICAL MATTERS AFFECTING THE COAST GUARD

Subsection (a) of this section changes certain provisions in the Department of Defense Authorization Act of 1984. That act directs the Secretary of Defense, in consultation with the Secretary of Health and Human Services, to conduct demonstration projects and to make reports to Congress on comparing medical care provided under chapter 55 of title 10, United States Code, with medical care provided by certain designated former Public Health Service hospitals. The act also enables civilian medical facilities to be designated as facilities of the uniformed services. The change would grant the Secretary of Transportation equal status with the Secretary of Health and Human Services in such consultations.

Subsection (b) of section 15 amends sections 1072, 1073, 1074, 1076, 1078, 1079, 1080, 1081, 1083, 1084, 1086, and 1092 of title 10, United States Code, by adding the Secretary of Transportation as an administering Secretary for medical care for members of the uniformed services.

SECTION 16—LIGHTING OF TOWING VESSELS ON LOWER MISSISSIPPI RIVER

This section would change a requirement for how vessels towing alongside or pushing ahead must be lighted. The existing rule has had an adverse effect on the safety of navigation for vessels operating on the Mississippi River below the Huey P. Long Bridge.

Und the old Inland Rules, power-driven vessels towing alongside or pushing ahead on the Mississippi River below the Huey P. Long Bridge were required to exhibit two white lights in a vertical line, carried either forward or aft.

Under rule 24(i) of the new unified Inland Navigational Rules, vessels towing alongside or pushing ahead on the Western Rivers (which includes the entire Mississippi River) are required to exhibit the following lights:

(1) Sidelights; and

(2) two towing lights in a vertical line.

According to the regional pilot associations, specifically the Cresent River Port Pilots Association, New Orleans, La., the Associated Branch Pilots (Bar Pilots), Port of New Orleans, and the New Orleans-Baton Rouge Steamship Pilots Association, Kenner, La., the elimination of the two masthead lights have created a dangerous condition for vessel pilots in that area. For approximately 6 months out of the year, that region experiences low visibility due to ground fog. This condition virtually obscures the sidelights and the special flashing light exhibited on the forward end of vessels being pushed ahead. Additionally, there is a multitude of background lights in the New Orleans area which creates additional visibility problems for mariners.

At its June 22–23, 1983, meeting, the Rules of the Road Advisory Council recommended that rule 24(i) of the Inland Navigational Rules Act of 1980 be amended to again require the two masthead lights for power-driven vessels towing alongside or pushing ahead on the Mississippi River below the Huey P. Long Bridge. Section 16 would implement this recommendation.

SECTION 17—TOWING SAFETY ADVISORY COMMITTEE EXTENSION

This section would extend the life of the Towing Safety Advisory Committee, established by Public Law No. 96-380 (94 Stat. 1521; 33 U.S.C. 1231a). This committee was established in 1980 to provide advice to the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. The committee has been meeting three times annually at no direct expense to the Government.

SECTION 18—VESSEL FIRE RESPONSE PROJECT GRANT

This section makes a grant, totalling $612,000 over 3 years, to the Maritime Fire and Safety Association. The Maritime Fire and Safety Association is a nonprofit corporation organized to promote fire protection and safety and comprising all port districts in Washington and Oregon located along the lower Columbia and Willamette Rivers.

Recognizing their mutual dependence on the 600-foot-wide, 110-mile-long navigation channel to the sea, the private and public marine terminal owners and operators have formed this voluntary association. Its basic goal is the development of a ship fire response capability over the length of the 110-mile channel.

This response capability does not now exist because of the multiple jurisdictions involved: two states, 7 counties, 14 cities, 7 port districts, and 22 fire districts. Compounding the problem is that fire district boundaries in both Oregon and Washington end at the shoreline. No entity has responsibility for the river, leading to complacency on the part of many local jurisdictions.

These deficiencies became apparent during the events surrounding the *Protector Alpha* fire at Kalama, Wash., in February 1982. This vessel was loading grain when it caught fire. The local fire district was not trained or equipped to respond, and its boundaries ended on the dock and did not extend to the ship. Her foreign crew abandoned her; she was set adrift in the river while burning. One Coast Guardsman was killed and another injured as they attempted to fight the fire with their meager resources. The ship ultimately was grounded and became a constructive total loss. Subsequently the Coast Guard called the marine community together as an *ad hoc* ship fire committee to review the fire and the general situation. The resulting general appreciation of their exposure and lack of response capability has evolved over the last 24 months into the Maritime Fire and Safety Association (MFSA).

The Committee believes that with active Coast Guard involvement in the Association, this demonstration project will provide a useful model for other such local/State/Federal efforts nationwide, and should result in significant savings of life and property.

SECTION 19—ASSOCIATE DEPUTY SECRETARY OF TRANSPORTATION

This section revises the provisions of subtitle 1 of title 49, United States Code, which specifies the organization of the DOT.

Section 102 of title 49, United States Code, is amended to provide for the position of Associate Deputy Secretary, below the existing positions of Secretary of Transportation and Deputy Secretary. The

Associate Deputy Secretary will be appointed by the President, and be subject to Senate confirmation.

The Committee understands that this new position is designed to improve the efficiency of the DOT, particularly in Department-level questions that involve foreign countries or issues that are in dispute among agencies within the Department.

SECTION 20—CUTTER AVAILABILITY

This section requires that 30 Coast Guard cutters be available for service on the Atlantic and Gulf Coasts. The Committee understands that the Coast Guard can meet this requirement by delaying retirement of two or three older cutters, while it is renovating its newer cutters. In the Committee's opinion, this floor represents the minimum number of cutters the Coast Guard needs to operate effectively on the Atlantic and Gulf Coasts. The Committee does not expect the Coast Guard to delay renovation of any of its cutters, in order to meet this floor. Nor should the Coast Guard reduce the number of cutters assigned to the West Coast, in order to satisfy the East Coast requirement. The Committee's intent is only to delay retirement of older Coast Guard cutters, until new or renovated cutters are available to replace them.

SECTION 21—COAST GUARD REPRESENTATION ON RESERVE FORCES POLICY BOARD

The Reserve Forces Policy Board is established under 10 United States Code 175. It is the principal policy adviser to the Secretary of Defense in matters relating to the reserve components.

When the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate one Coast Guard officer to serve as a voting member of the Board.

This section would increase the Coast Guard's voting representation to two officers. This will move the Coast Guard closer to parity with the Army, Navy, and Air Force, each of which has five voting members.

SECTION 22—SURVIVAL SUIT REGULATION

Section 22 directs the Secretary of Transportation to promulgate regulations to require exposure suits on designated types of vessels when operating in waters which have an average monthly temperature of less than 60 degress Fahrenheit. The Secretary may require exposure suits on vessels in warmer waters. A vessel may not be exempted from this requirement merely because it carries other types of lifesaving equipment, such as covered lifeboats, for example. Both civil and criminal penalties for violation of these regulations are provided.

On February 6 and 7, 1984, the Coast Guard published final rules, effective August 6, 1984, requiring exposure suites for personnel on board mobile offshore drilling units and certain oceangoing and coastwise tankers, cargo and miscellaneous vessels, and oceanographic vessels. One of these regulations exempts vessels with covered lifeboats. That regulation would have to be with-

drawn if the provisions of the bill are enacted. Penalties under the regulations are also different from those set forth in the bill.

Under the Coast Guard's regulations, *commercial fishing* vessels are not required to carry exposure suits. The Committee endorses this policy.

VOTES IN COMMITTEE

Senator Packwood moved to report S. 2526 with an amendment in the nature of a substitute.

Senator Trible offered an amendment that would require the Secretary of Transportation to promulgate a regulation requiring exposure suits on vessels that operate in waters that have a minimum average annual monthly temperature of less than 60 fahrenheit. The amendment was agreed to by voice vote.

On a voice vote, S. 2526, with an amendment in the nature of a substitute, was ordered favorably reported.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

SECTION 175 OF THAT TITLE

§ 175. Reserve Forces Policy Board

(a) * * *

[(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate an officer of the Regular Coast Guard or the Coast Guard Reserve to serve as a voting member of the Board.]

(b) Whenever the Coast Guard is not oprating as a service in the Navy, the Secretary of Transportation may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c)–(f) * * *

SECTION 1072 OF THAT TITLE

§ 1072. Definitions

In this chapter:

(1) * * *

(2) "Dependent", with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widoweer;

(D) an unmarried legitimate child, including an adopted child or a stepchild, who either—

(i) has not passed his twenty-first birthday;

(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learing approved by [the Secretary of Defense or the Secretary of Health and Human Service, as the case may be,] *the administering Secretary* and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;

(E)–(F) * * *

(3) "Administering Secretaries" means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

SECTION 1073 OF THAT TITLE

§ 1073. Administration of this chapter

Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, [and the Secretary of Health and Human Services shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and] *the Secretary of Transportation shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter* for the Environmental Science Services Administration and the Public Health Service.

SECTION 1074 OF THAT TITLE

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the [Secretary of Defense and the Secretary of Health and Human Services] *administering Secretaries,* a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the [Secretary of Defense and the Secretary of Health and Human Services] *administering Secretaries,* a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The [Secretary of Defense and the Secretary of Health and Human Services] *administering Secretaries* may, with the agreement of the Administrator of Veterans' Affairs, provide care to persons covered by this subsection in facilities operated by the Administrator and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

SECTION 1076 OF THAT TITLE

§ 1076. Medical and dental care for dependents: general rule

(a) * * *

(b) Under regulations to be prescribed jointly by [the Secretary of Defense and the Secretary of Health and Human Service] *the administering Secretaries*, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death (A) would have been eligible for retired pay under chapter 67 of this title but for the fact that he was under 60 years of age, and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60. A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.

(c) * * *

(d) To utilize more effectively the medical and dental facilities of the uniformed services, [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries*, shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

SECTION 1078 OF THAT TITLE

§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting [the Secretary of Health and Human Services] *the other administering Secretaries*, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting [the Secretary of Health and Human Services] *the other administering Secretaries*, and after a finding that such charges are necessary.

(c) * * *

SECTION 1079 OF THAT TITLE

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting [with the Secretary of Health and Human Services] *with the other administering Secretaries*, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except that—

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service;

(3) eye examinations may not be provided;

(4) under joint regulations to be prescribed by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries*, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis; and

(6) inpatient mental health services may not (except as provided in subsection (i) be provided to a patient in excess of 60 days in any year.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater.

(2) Except as provided in clause (3), the first $50 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year.

(3) A family group of two or mor persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by [the Secretary of Defense and the Secretary of Health and Human

Services)] *the administering Secretaries*, as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries.*

(d) Under joint regulations to be prescribed by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries*, in the case of a dependent, as defined in section 1072(2)(A) or (D) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d).

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries* as follows:

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries.*

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue

to be eligible for such benefits until they pass their twenty-first birthday.

(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 90th percentile of billed charges made for similar services in the same locality during the base period.

(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation [with the Secretary of Health and Human Services] *with the other administering Secretaries*, and the base period shall be a period of twelve calendar months. The base period shall be adjusted at least once a year.

(i) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health service—

(1) provided under the program for the handicapped under subsection (d);

(2) provided as residential treatment care;

(3) provided as partial hospital care; or

(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries* which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the Secretary of Health and Human Services and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the Secretary of Health and Human Services and such other entities as the Secretary considers appropriate.

SECTION 1080 OF THAT TITLE

§ 1080. Contracts for medical care for spouses and children: election of facilities

A dependent covered by section 1079 of this title may elect to receive medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting [the Secretary of Health and Human Services] *the other administering Secretaries*, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

SECTION 1081 OF THAT TITLE

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by [the Secretary of Defense or the Secretary of Health and Human Services] *one of the administering Secretaries* not later than 120 days after the close of each year the plan is in effect.

SECTION 1083 OF THAT TITLE

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting [the Secretary of Health and Human Services] *the other administering Secretaries.*

SECTION 1084 OF THAT TITLE

§ 1084. Determinations of dependency

A determination of dependency by [the Secretary of Defense or the Secretary of Health and Human Services] *an administering Secretary* under this chapter is conclusive. However, [he] *the administering Secretary* may change a determination because of new evidence or for other good cause. The Secretary's determination

may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

SECTION 1085 OF THAT TITLE

§ 1085. Medical and dental care from another executive department: reimbursement

[If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost or providing such care.]

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

SECTION 1086 OF THAT TITLE

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with [the Secretary of Health and Human Services] *the other administering Secretaries*, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(d) of this title.

(b)–(d) * * *

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by [the Secretary of Defense and the Secretary of Health and Human Services] *the administering Secretaries*, the right to make this election may be limited for those persons residing in an area where adquate facilities of the uniformed service are available.

(f)–(g) * * *

SECTION 1092 OF THAT TITLE

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the [Secretary of Health and Human Services] *other administering Secretaries*, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2)–(3) * * *

(c)–(c) * * *

TITLE 46, UNITED STATES CODE

CHAPTER 21 OF THAT TITLE

CHAPTER 21. GENERAL

Section
2101. General definitions.
2102. Limited definitions.
2103. Superintendence of the merchant marine.
2104. Delegation.
2105. Report.
2106. Liability in rem.
2107. Civil penalty procedures.
2108. Refund of penalties.
2109. Public vessels.
2110. Fees prohibited.
2111. Pay for overtime services.
2112. Authority to change working hours.
2113. Authority to exempt certain vessels.
2114. Protection of seamen against discrimination.

§ 2101.–§ 2113. * * *

§ 2114. Protection of seamen against discrimination

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel may not discharge or in any manner discriminate against any seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the

seaman believes that a violation of this subtitle, or regulations issued under this subtitle, has occurred.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including—

(1) restraining violations of this section; and

(2) reinstatement to the seamen's former position with back pay.

CHAPTER 31 OF THAT TITLE

CHAPTER 31. GENERAL

Section
3101. Authority to suspend inspection.
3102. Exposure suits.

§ 3101. * * *

§ 3102. Exposure suits

(a) The Secretary shall by regulation require exposure suits on vessels designated by the Secretary that operate in waters having a minimum average annual monthly temperature of less than 60 degrees Fahrenheit. The Secretary may not exclude a vessel from designation under this section only because that vessel carries other lifesaving equipment.

(b) The regulations prescribed under this section shall identify those geographic areas in which, and times of the year when, exposure suits are required.

(c) The Secretary shall establish standards for an exposure suit required by this section, including standards to guarantee adequate thermal protection, buoyance and flotation stability.

(d)(1) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $25,000. The vessel also is liable in rem for the penalty.

(2) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section may be fined not more than $25,000, imprisoned for not more than 5 years, or both.

SECTION 4307 OF THAT TITLE

§ 4307. Prohibited acts

(a) A person may not—

(1) manufacture, construct, asesmbe, sell or offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, a recreational vessel, associated equipment, or component of the vessel or equipment unless—

(A)*(i)* it conforms with this chapter or a regulation prescribed under this chapter; **[**or**]** *and*

(ii) it does not contain a defect which has been identified, in any communication to such person by the Secretary or

the manufacturer of that vessel, equipment or component, as creating a substantial risk of personal injury to the public; or

(B) it is intended only for export and is so labeled, tagged, or marked on the recreational vessel or equipment, including any markings on the outside of the container in which it is to be exported;

(2) affix, attach, or display a seal, document, label, plate, insignia, or other device indicating or suggesting compliance with standards of the United States Government on, in, or in connection with, a recreational vessel or item oof associated equipment that is false or misleading; or

(3) fail to provide a notification as required by this chapter or fail to exercise reasonable diligence in carrying out the notification and reporting requirements of this chapter.

(b) * * * *

SECTION 4311 OF THAT TITLE

§ 4311. Penalties and injunctions

(a) * * * *

(b) A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may be not more than $100,000 for a related series of violations. When a corporation violates section 4307(a)(1), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

(1) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the *defect or the* nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

(2) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.

(c)–(e) * * *

(f) A person is not subject to a penalty under this chapter if the person—

(1) establishes that the person did not have reason to know, in exercising reasonable care, that a recreational vessel or associated equipment does not conform with the applicable safety standards of the Government *or that the person was not advised by the Secretary or the manufacturer of that vessel, equipment or component that the vessel, equipment or component contains a defect which creates a substantial risk of personal injury to the public;* or

(2) holds a certificate issued by the manufacturer of that recreational vessel or associated equipment to the effect that the

recreational vessel or associated equipment conforms to all applicable recreational vessel safety standards of the Government, unless the person knows or reasonably should have known that the recreational vessel or associated equipment does not so conform.

(g) * * *

SECTION 8703 OF THAT TITLE

§ 8703. Tankerman on tank vessels

(a) * * *

[(b) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates as tankermen, stating the types of oil or hazardous material that can be handled with safety to the vessel and the marine environment.]

(c) * * *

THE ACT OF MARCH 23, 1906

THE FIRST SECTION OF THAT ACT

When, hereafter authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of Transportation [and Chief of Engineers] for [their] *the Secretary's* approval, nor until [they] *the Secretary* shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of this Act have been approved [by the Chief of Engineers and] by the Secretary [of Transportation] it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval [of the Chief of Engineers and] of the Secretary [of Transportation]. This section shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.

THE GENERAL BRIDGE ACT OF 1946

SECTION 502 OF THAT ACT

SEC. 502. (a) * * *

(b) The location and plans for such bridges shall be approved by [the Chief of Engineers and] the Secretary of Transportation before construction is commenced, and, in approving the location and plans of any bridge, [they] *the Secretary* may impose any specific conditions relating to the maintenance and operation of the structure which [they] *the Secretary* may deem necessary in the interest of public navigation, and the conditions so imposed shall

have the force of law. This subsection shall not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.

(c) * * *

THE ACT OF OCTOBER 6, 1980

THE FIRST SECTION OF THAT ACT

That (a)–(d) * * *

(e) Unless extended by subsequenty Act of Congress, the Committee shall terminate [five years from the date of enactment of this Act] *on October 6, 1990.*

THE INLAND NAVIGATIONAL RULES ACT OF 1980

SECTION 2 OF THAT ACT

SEC. 2. Rule 24. Towing and pushing

(a)–(h) * * *

(i) Notwithstanding paragraph (c), on the Western Rivers *(except below the Huey P. Long Bridge on the Mississippi River)* and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit:

(i) sidelights; and

(ii) two towing lights in a vertical line.

(j) * * *

SECTION 5 OF THAT ACT

SEC. 5. (a)–(b) * * *

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary for the conduct of its business. Members of the Council, [who are not officers or employees of the United States shall, while attending meetings of the Council, be entitled to receive compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5, United States Code; and] while away from their home or regular place of business, [they] may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this section shall not render members of the Council officers or employee of the United States for any purpose.

(d) Unless extended by subsequent Act of Congress, the Council shall terminate [5 years from the date of enactment of the act] *on December 24, 1990.*

THE MILITARY CONSTRUCTION AUTHORIZATION ACT, 1982

SECTION 911 OF THE ACT

SEC. 911. (a) Any Public Health Service hospital or other station which was transferred to a public or nonprofit private entity pursuant to the provisions of section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 603) shall be deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code, if such hospital or other station was, on the day before the date of the transfer, a facility approved under such chapter to provide medical and dental care to members and former members of the uniformed services and their dependents.

(b) The Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* may terminate, for purposes of chapter 55 of title 10, United States Code, the approved status, of any facility described in subsection (a) to furnish medical or dental care to members and former members of the uniformed services and their dependents as provided for in section 1252(e) of the Department of Defense Authorization Act, 1984. The termination of such status in the case of any such facility may be effected only by an order jointly issued by the Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* which identifies the facility whose approved status is being terminated and specifies the date on which status is being terminated.

(c) The Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* shall reimburse any facility described in subsection (a) for medical and dental care provided by such facility to members and former members of the uniformed services and their dependents who receive such care under chapter 55 of title 10, United States Code. The rates of reimbursement shall be negotiated and agreed upon by the Secretary of Defense, the Secretary of Health and Human Services, *the Secretary of Transportion when the Coast Guard in not operating as a service in the Navy,* and the appropriate officials representing the facility concerned. The rates of reimbursement shall be based upon medical and dental care costs in the area in which the facility concerned is located.

THE DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

SECTION 1252 OF THAT ACT

SEC. 1252. (a) The Secretary of Defense, in consultation with the Secretary of Health and Human Services *and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy,* shall conduct demonstration projects for the purpose of comparing and evaluating the cost-effectiveness, accessibility, pa-

tient acceptance, and the quality of medical care contracted for by the Secretary of Defense under section 1079 and 1086 of title 10. United States Code with the medical care provided in those facilities deemed to be facilities of the uniformed services by virtue of section 911 of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c). The Secretary of Defense shall begin conducting such projects within one year after the date of the enactment of this section and continue conducting such projects for not less than three years.

(b) The projects carried out by the Secretary of Defense under this subsection shall utilize various alternative mechanisms for the pament of medical services provided eligible persons, including capitation, prospective payment, all-inclusive fee-for-service charges, and other concepts and programs consistent with the purpose of this section.

(c) If the Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* determine such action is necessary in order to permit a meaningful evaluation of alternative methods of providing medical care to persons eligible for such care under section 1079 and 1086 of title 10, United States Code, they may jointly designate additional civilian medical facilities to be facilities of the uniformed services for the purposes of section 1079 of such title. The Secretary may designate a facility under the authority of this subsection for such purposes only if such action is agreed to by the governing body of the facility.

(d) The Secretary of Defense, in consultation with the Secretary of Health and Human Services *and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy,* shall submit annually to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives a written report on the results of the studies and projects carried out under this section. The first such report shall be submitted not later than one year after the date of the enactment of this section. The last such report shall be submitted not later than one year after the completion of all such studies and projects.

(e) The Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* may terminate, for purposes of chapter 55 of title 10, United States Code, the status of any facility referred to in subsection (a) or (c) to furnish medical or dental care to members and former members of the uniformed services or their dependents, and such termination may become effective at any time after December 31, 1987. The termination of such status in the case of any such facility may be effected only by an order jointly issued by the Secretary of Defense [and the Secretary of Health and Human Services], *the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy* which identifies the facility whose status is being terminated and specifies the date on which such status is being terminated. A copy of each such order shall be furnished to the affected facility and the Committees on Appropria-

tions and on Armed Services of the Senate and the House of Representatives and shall become effective in accordance with the terms of the notice, but not earlier than six months following the date on which a copy of the notice has been furnished to the facility and the committees. Any facility described in subsection (a) or designated under subsection (c) may terminate its status or designation made under that subsection at any time after the expiration of six months following the date on which a copy of the order terminating the status or designation has been furnished the facility.

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